

suggest to that person how they might arrive at the claimed non-combustible premix or even that a non-combustible premix is possible.

In furtherance of the arguments submitted in that Reply of August 18, 2005, a Declaration Under 37 C.F.R. § 1.132 by Dr. Lothar Zipfel, the first-named inventor of the present application, is submitted herewith in unexecuted form. An executed copy of this Declaration will be submitted in due course.

In his Declaration, Dr. Zipfel states that “[t]he cited references made of record in the Office Action do not teach or suggest that it is possible to obtain a non-combustible polyol-based premix, much less teach or suggest the critical proportions of a binary blowing agent (4-35 wt.%) and a phosphorus compound (10-20 wt.%) required to achieve such an unexpected result.” See paragraph 21 of the Declaration. Thus, Dr. Zipfel concludes that the references do not suggest or teach that it is possible to obtain a non-combustible polyol-based premix composition. Dr. Zipfel also states his conclusion that the non-combustibility of the claimed premix compositions is an unexpected result.

The results of the experiments outlined in Dr. Zipfel’s Declaration support these conclusions. In particular, paragraph 12 compares the expected and actual flash points of three of the inventive premix compositions. In each case, the premix composition was determined to have no flash point, despite the expectation that the flash point would be within the range of from -10°C to 0°C.

Paragraphs 13-19 of the Declaration discuss the surprising and dramatic result that, for certain mixtures of propellant / polyol, the addition of tris-chloroisopropyl phosphate to a binary blowing agent mixture of 1,1,1,3,3-pentafluorobutane and 1,1,1,2,3,3,3-heptafluoropropane significantly increases the flash point of the mixture. The increase is so significant that the flash point for the 8.7 percent mixture of propellant / polyol, is higher than that for the 6.6 percent mixture despite the general trend that increasing the ratio of propellant /

polyol decreases the flash point (as shown in the second-fourth column of Table 2).

These results support Dr. Zipfel's conclusion that a person of skill in the art would not have expected that a premix, as claimed, would be non-combustible. Accordingly, the discovery of non-combustible premixes amounts to an unexpected and unforeseen result.

For these reasons, it is believed that the obviousness rejections cannot be properly maintained. Reconsideration and withdrawal of these rejections are respectfully requested.

Reconsideration of the nonstatutory double patenting rejection of claims 1-6 over US 6,380,275 is also respectfully traversed. The '275 Patent does not teach or suggest a noncombustible premix as is presently claimed. Further, the present record lacks any showing of a motivation to a person of skill in the art to try to arrive at a noncombustible premix. Moreover, the Declaration submitted herewith evidence the unexpected results achieved with the claimed invention. Accordingly, the claims of the present application are not obvious variants of the claims of the '275 Patent and reconsideration and withdrawal of the double patenting rejection are respectfully requested.

### CONCLUSION

In view of the foregoing, the application is respectfully submitted to be in condition for allowance, and prompt favorable action thereon is earnestly solicited.

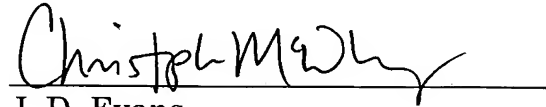
If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

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If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #037110.52632US).

December 9, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher McWhinney", written over a horizontal line.

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